

CHAPTER 4. FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

SECTION 4. LEASING AGREEMENTS AND INTERCHANGE ARRANGEMENTS

307. GENERAL. Leasing and interchange of large transport category aircraft between United States (U.S.) and foreign air carriers is widely used. Leasing agreements are characterized as either “wet” or “dry.” An interchange agreement is a subset of a dry lease.

309. WET LEASE. The term “wet lease” means a leasing agreement whereby a certificate holder agrees to provide an aircraft and at least one pilot flight crewmember. The words “certificate holder” as used in Special Federal Aviation Regulations (SFAR) 38-2 refer to a U.S. citizen authorized to operate aircraft for compensation or hire under Federal Aviation Regulations (FAR) Parts 121 and 135. FAR § 121.153(c) prohibits a U.S. air carrier from wet leasing any aircraft from any foreign air carrier or foreign person. This prohibition is partly based on 41703 of Title 49, United States Code (U.S.C.) (formerly 1108(b) of the Federal Aviation Act (FA Act) of 1958). Foreign air carriers and foreign persons conducting common carriage operations usually prefer to dry lease U.S.-registered aircraft in order to have operational control of the leased U.S.-registered aircraft. FAA policy requires each U.S. air carrier to retain operational control of each wet leased aircraft listed on its operations specifications regardless of whether the aircraft is U.S.- or foreign-registered. This policy applies to aircraft wet leased to any foreign air carrier and to any foreign person.

NOTE: A U.S. air carrier may not lease or charter with crew (wet lease) any aircraft (either foreign- or U.S.-registered) from any foreign air carrier (41703 of Title 49, U.S.C.) and FAR § 121.153(c) and § 135.25(d)). See volume 3, chapter 13.

311. DRY LEASE.

A. The leasing of U.S.-registered aircraft (without crewmembers) by foreign air carriers and foreign persons engaged in common carriage is widely used. A dry lease permits the lessee to have operational control and provide the necessary flight and cabin crewmembers, ground personnel, dispatchers, and ground

facilities necessary to operate the leased aircraft. A dry leased aircraft must be removed from the U.S. air carrier’s operations specifications and listed on the foreign air carrier lessee’s operations specifications.

B. Operation of a dry lease U.S.-registered aircraft by any foreign air carrier operating into and out of the U.S. or by any foreign person engaged in common carriage solely outside the U.S. shall be conducted in compliance with the following:

- Appropriate requirements of FAR Part 91 (See FAR § 91.1 applicability.)
- FAR Part 129 (foreign air carrier only)
- FAR § 129.14, which provides the maintenance and minimum equipment list (MEL) requirements for U.S.-registered aircraft operated by a foreign air carrier or a foreign person engaged in common carriage solely outside the U.S. (See FAR § 129.1(b).)
- FAR § 61.3(a), 61.77, and 63.23, which provide the appropriate flight crewmember (pilot, flight engineer, and flight navigator) certificate requirements (See section 6 of this chapter.)
- FAR Parts 21, 43, and 65
- Title 49, Part 175 of the Code of Federal Regulations (49 CFR 175), which prescribes rules for loading and carrying dangerous articles and magnetized materials in any civil aircraft in the U.S. and in civil aircraft of U.S. registry anywhere in air commerce
- All applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the U.S.

FYI: It is advisable for the lessor to include in the lease agreement the applicable provisions of the FAR under which the aircraft will be operated and maintained to ensure the airworthiness of the aircraft when it is returned to the lessor.

C. Operations specifications and amendments that authorize the use of any U.S.-registered aircraft by a foreign air carrier should be applied for and processed in accordance with FAR § 129.11 and section 2.

313. INTERCHANGE AGREEMENT.

A. An interchange agreement (a subset of a dry lease) is another method of providing operational flexibility and greater utilization of large transport category aircraft. Interchange agreements permit a foreign air carrier or foreign person to dry lease and take or relinquish operational control of an aircraft at an airport located either in the U.S. or in the state of the foreign air carrier or foreign person.

B. An aircraft used in an interchange agreement may be simultaneously listed on the operations specifications of both the U.S. and the foreign air carrier. Operational control of the aircraft is transferred at an airport specified in the agreement and as authorized in the operations specifications. For example, a foreign air carrier operates into Washington Dulles International Airport and turns over the aircraft to a U.S. air carrier that conducts its own operation between Dulles and certain airports within the U.S. Another example is a U.S. air carrier that operates an aircraft into a United Kingdom airport (the specified inter-

change point airport for the U.S. air carrier) and turns the aircraft over to a foreign operator that then operates the aircraft on certain of its routes within Europe. In such interchange agreements, the aircraft may be of either U.S. or foreign registry. However, if the aircraft is foreign registered, it must specifically comply with FAR 121.153(c) or FAR § 135.25(d), as appropriate, in order to be operated by a U.S. certificate holder.

C. The operations specifications of both the U.S. and foreign air carrier must be amended to reflect any interchange agreement. If the aircraft is of U.S. registry, the foreign operator must comply with the applicable FAR requirements while it has operational control of the aircraft.

FYI: Operations specifications are not issued to a foreign operator of a U.S.-registered aircraft engaged in common carriage solely outside the U.S. However, the foreign operator must comply with FAR 129.14 and all other applicable FAR requirements while it has operational control of any U.S.-registered aircraft.

314.-318. RESERVED.

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